

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                        |   |                 |
|------------------------|---|-----------------|
| MICHAEL GILYARD,       | ) |                 |
|                        | ) |                 |
| Plaintiff,             | ) |                 |
| vs.                    | ) | NO. CIV-11-22-D |
|                        | ) |                 |
| THOMAS GIBSON, et al., | ) |                 |
|                        | ) |                 |
| Defendants.            | ) |                 |

**ORDER**

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brought this action pursuant to 42 U. S. C. § 1983. In accordance with 28 U. S. C. § 636(b)(1)(B) and (C), the matter was referred to United States Magistrate Judge Bana Roberts for initial consideration. Defendants moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) [Doc. No. 26]. Plaintiff did not timely respond, but the Magistrate Judge *sua sponte* granted him an extension of time to respond. After Plaintiff notified her that the facility where he is confined had been on lock down so that he could not access the law library, the Magistrate Judge granted another extension of his response deadline. He did not respond, but filed a motion seeking appointment of counsel [Doc. No. 30].

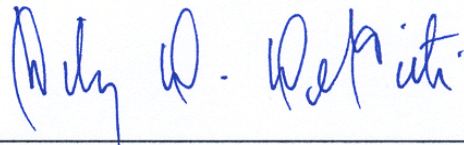
On January 23, 2012, the Magistrate Judge filed a Report and Recommendation [Doc. No. 31] in which she recommended the Court grant the motion to dismiss. More specifically, she recommended dismissal with prejudice as to certain claims, but she also recommended the Court grant Plaintiff leave to amend other claims in order to cure the pleading deficiencies she noted in the Report and Recommendation. She also recommended that the motion for appointment of counsel be denied without prejudice to its reassertion.

In the Report and Recommendation, the Magistrate Judge advised the parties of their right to file objections, and she set a February 13, 2012 deadline for filing of the same. She also expressly cautioned the parties that a failure to timely object would constitute a waiver of the right to appellate review of the findings and conclusions set forth in the Report and Recommendation.

The February 13, 2012 deadline has expired, and no objections have been filed by the parties, and no party has requested an extension of the deadline. Accordingly, the Report and Recommendation [Doc. No. 31] is adopted as though fully set forth herein. The motion to dismiss [Doc. No. 26] is granted, but Plaintiff is granted leave to file an amended complaint, consistent with the specific rulings explained in the Report and Recommendation. Plaintiff's motion for appointment of counsel [Doc. No. 30] is denied without prejudice to its reassertion.

Plaintiff's amended complaint shall be filed no later than 20 days from the date of this Order. Defendants' responses shall be filed according to the deadlines set forth in the Federal Rules of Civil Procedure and the Local Civil Rules of this Court.

IT IS SO ORDERED this 17<sup>th</sup> day of February, 2012.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE